

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

JOEL DESERTO,

Plaintiff,

v.

Case No. 1:22-cv-00096-JRH-BKE

AIYAN DIABETES CENTER, INC.,
and DR. SIVAKUMAR JAYABALAN,
in his Personal Capacity,

Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO ENFORCE
THE FLSA AND THE BREACH OF CONTRACT SETTLEMENT
AGREEMENT**

Defendants, Aiyon Diabetes Center, Inc. and Dr. Sivakumar Jayabalan (“Defendants”), by and through their undersigned counsel, respectfully respond to Plaintiff’s Motion to Enforce the FLSA and The Breach of Contract Settlement Agreement [Dkt No. 36], as follows:

Undersigned counsel has lost contact with Aiyon Diabetes and Dr. Jayabalan and is, therefore, unable to adequately respond to Plaintiff’s motion. Upon information and belief, counsel’s principal client contact at Aiyon Diabetes Center (Dr. Janaki Nadarajah) and Dr. Jayabalan have temporarily departed the United

States. With the exception of a single email exchange, both Dr. Jayabalan and Dr. Nadarajah have been largely unavailable over the preceding two weeks. Undersigned counsel has no information to believe that neither Aiyan Diabetes nor Dr. Jayabalan intends to avoid complying with the terms of the parties' settlement agreements.

Additionally, Plaintiff requests the Court enter a judgment, including "a 10% per day penalty anticipated by the settlement agreements for each day after July 27, 2023 that the settlement amounts remain unpaid." [Dkt. 36, at p. 2.]. Plaintiff cites to no authority supporting the imposition of a 10% daily penalty, which would annualize to over 3,650% penalty. The Court should deny Plaintiff's request to penalize Defendants.

WHEREFORE, Defendants, Aiyan Diabetes Center, Inc. and Dr. Sivakumar Jayabalan, respectfully request an extension of time up to and including August 21, 2023, to supplement their response to Plaintiff's Motion and/or comply with the terms of the parties' settlement agreements. Additionally, the Court should deny Plaintiff's request to impose a 3,650% annualize penalty on Defendants.

Respectfully submitted this 11th day of August, 2023.

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By: /s/ Ian E. Smith
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Attorneys for Defendants | Aiyan Diabetes
Center, Inc. and Dr. Sivakumar Jayabalan

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1D

In accordance with Rule 7.1D, I hereby certify that the foregoing was prepared using Times New Roman, 14 point, one of the font and point selections approved by the Court in Local Rule 5.1B.

By: /s/ Ian E. Smith
Ian E. Smith, Esq.

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_____ /

CERTIFICATE OF SERVICE

I certify that on this 11th day of August 2023, I electronically filed the foregoing DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO ENFORCE THE FLSA AND THE BREACH OF CONTRACT SETTLEMENT AGREEMENT with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Respectfully submitted,
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